IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN - DUBUQUE DIVISION

Crompton Corp.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. C01-1015 MJM
	)	
City of Dubuque,	)	
	)	**ORDER**
Defendant.	)	
	)	
	)	

Before the court is defendant City of Dubuque's motion to dismiss count 6 of plaintiff Crompton Corporation's second amended complaint. Count 6 seeks a determination of the constitutionality of the Iowa Urban Renewal Statute's notice provision. Iowa Code § 403.5(3). The court has dismissed counts 3 (claim for declaratory relief) and 5 (request to enjoin the condemnation proceedings) of Crompton's first amended complaint. For the following reasons, the defendant's motion to dismiss count 6 of the second amended complaint is granted.

FACTS

The City of Dubuque (hereinafter "the City") submitted an urban renewal plan, which subsequently created an urban renewal district in the area known as the Fourth Street Peninsula. The formal name of the urban renewal district is the "Ice Harbor

Urban Renewal District" and was authorized by Resolution 241-00 on June 5, 2000[1]. (Doc. 1, Exhibit 1). Since 1991, plaintiff Crompton Corporation is a titleholder of real estate located within the declared Ice Harbor Urban Renewal District. On August 7, 2000, the City issued Ordinance 67-00 forbidding the issuance of "any permit for any new construction, demolition, or substantial enlargement, alteration, repair or remodeling on any structure, building or sign in the Fourth Street Peninsula ROD Redevelopment Overlay District . . . ." On or about March 19, 2001, the City established a fair market value of Crompton's realty and, through a March 29, 2001, letter sent from the City's counsel, made an offer to buy the real estate in question for $1,390,000.00, cash at closing. The City had listed the condemnation of the realty as an item on the City Council's agenda for April 23, 2001, with the intent of acquiring the realty via eminent domain if Crompton did not accept the City's offer. The City commenced the condemnation action on April 20, 2001. On June 20, 2001, the court granted the City's motion for judgment on the pleadings as to counts 3 (claim for declaratory relief) and 5 (request to enjoin the condemnation proceedings) of Crompton's first amended complaint.

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[1]The original urban renewal plan was adopted by the City in Resolution 403-89 on December 18, 1989, and was further amended and restated by Resolution 241-00. Iowa Code Section 403.5(1) reads, in part: "[A]uthority is vested in every municipality to prepare, to adopt and to revise from time to time, a general plan for the physical development of the municipality as a whole, giving due regard to environs and metropolitan surroundings."

STANDARD FOR MOTION TO DISMISS PURSUANT TO RULE 12(b)(6)

The court considers a rule 12(b)(6) motion to dismiss under a "stringent standard." *See Fusco v. Xerox Corp.*, 676 F.2d 332, 334 (8th Cir. 1982). The well settled 'stringent standard' holds that "[a] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). In considering a motion to dismiss, the court must accept the facts alleged in the complaint as true. *See Coleman v. Watt*, 40 F.3d 255, 258 (8th Cir. 1994). In addition,

> [a] complaint must be viewed in the light most favorable to the plaintiff and should not be dismissed merely because the court doubts that plaintiff will be able to prove all of the necessary factual allegations. 'Thus, as a practical matter, a dismissal under Rule 12(b)(6) is likely to be granted only in the unusual case in which a plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief (citations omitted).'

Fusco, 676 F.2d at 334 (quoting *Jackson Sawmill Co. v. United States*, 580 F.2d 302, 306 (8th Cir. 1978)). Therefore, "[t]he issue is not whether the plaintiff will prevail but whether the claimant is entitled to offer evidence to support the claims." *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

ANALYSIS

The issue before the court is whether Crompton is entitled to actual notice of the establishment of an urban renewal district which affects Crompton's property interest. Crompton, in its second amended complaint, argues the City's urban renewal plan and the creation of the Ice Harbor Urban Renewal District by Resolution 241-00 without actual notice, and the City's assertion the District is for a public purpose, constitutes a taking without notice, and hence a violation of its protected Fourteenth Amendment interest in the realty. Crompton's argument is premised on the contention that the declaration of the urban renewal zone was the statutory predicate to the taking of its property interest, and, consequently, Crompton should have received actual notice of the declaration of the urban renewal district. Crompton concedes it received adequate notice of the subsequent condemnation proceedings pursuant to Iowa Code § 6B.3. However, Crompton distinguishes that claim from the City's declaration of the urban renewal district as the statutory predicate to the condemnation proceeding. Therefore, according to Crompton, it had a right to actual notice of the creation of the Ice Harbor Urban Renewal District.

At the outset, it is important to restate what Iowa courts have long held: "The power of eminent domain may be exercised only where a public use is involved. By the great weight of authority urban redevelopment laws have been upheld as within this limitation. Taking of property thereunder is a taking for 'public use' or 'public

purpose.'" *R&R Welding Supply Co. v. City of Des Moines*, 256 Iowa 973, 977, 129 N.W.2d 666, 669 (1964). As this court made clear in its June 20, 2001, order dismissing counts 3 and 5 of Crompton's complaint: "When the legislature declares a condemnation-related use is public in nature, there exists an attendant presumption of constitutionality with which courts will not interfere unless the purpose is clearly, plainly, and manifestly of a private character." *Crompton Corp. v. City of Dubuque*, Opinion and Order of June 20, 2001, Doc. No. 17. Again, it is abundantly clear the City's declaration of the Ice Harbor Urban Renewal District was for a public purpose.

The notice provision of Iowa's Urban Renewal Law states, in part:

> The local governing body shall hold a public hearing on an urban renewal plan after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality. The notice shall describe the time, date, place and purpose of the hearing, shall generally identify the urban renewal area covered by the plan, and shall outline the general scope of the urban renewal activities under consideration.

Iowa Code § 403.5(3). There is no dispute over whether the City followed the notice provisions with respect to the urban renewal plan as laid out in this statute. However, Crompton asserts this provision is constitutionally inadequate to protect its property interest.

In support of its contention that the urban renewal statute is constitutionally infirm, Crompton directs this court to what it contends is analogously persuasive

authority. First, Crompton looks to the United States Supreme Court's *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988) decision. In *Tulsa*, the Court examined the notice provisions for filing claims of the Oklahoma Probate Code to ascertain whether known creditors were entitled to actual notice. The Court held that requiring actual notice to known or reasonably ascertainable creditors was "not so cumbersome as to unduly hinder the dispatch with which probate proceedings are conducted." *Id.* at 490. The key distinction that Crompton fails to make is the contextual differences between the present case and that presented to the Court in *Tulsa*. In *Tulsa*, the Court was examining Oklahoma's non-claim statute, not the government's exercise of its eminent domain power as is the case in this litigation. This is a crucial distinction, and as such "the necessity and expediency of the taking of property for public use," which is often present in eminent domain cases, was not implicated in the Court's *Tulsa* decision. *North Laramie v. Hoffman*, 268 U.S. 276, 284-85 (1925).

Crompton asserts the United States Supreme Court's decision in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1033 (1992), is squarely on point and addresses a right similar to that Crompton is seeking to protect. However, *Lucas* dealt with an economic regulation, imposed by the South Carolina Coastal Council under the authority of a state statute, that deprived the land owner of all economically

beneficial use without providing the land owner with the constitutionally required just compensation. *Id.* at 1024-32. Here, the City has rendered the offer of just compensation as required by the takings and just compensation clause of the Federal Constitution. U.S. Const. amends. V and XIV. The City issued the urban renewal plan pursuant to the Iowa Urban Renewal Statute to eliminate and prevent "the development or spread of slums and blight . . . ." Iowa Code § 403.17(25). The urban renewal plan, pursuant to statute, is part of a larger plan for the entire municipality, and a municipality may not acquire property until an urban renewal plan is approved. Iowa Code § 403.5(1). Further, the notice required by the statute and provided by the City is adequate given the prospective nature of the urban renewal plan.

Crompton points this court to *Craigmiles v. Giles*, 110 F. Supp. 2d 658 (E.D. Tenn. 2000). Again, the distinction between *Craigmiles* and this litigation is that there is not an economic regulation imposed, nor is there a substantial restriction on individual liberty in this case, as was alleged in *Craigmiles. Id.* at 665-68. *Craigmiles* did not address the right of the City to exercise its eminent domain powers, nor does the statutory scheme that was before the *Craigmiles* court parallel the Iowa Urban Renewal statute.

Finally, Crompton looks to *Casino Reinvestment Development Authority v.*

Banin, 727 A.2d 102 (N.J. Super. Ct. Law Div. 1998) for support. The difference between *Casino Reinvestment* and this litigation is that the Casino Reinvestment Development Authority, the body exercising the power of eminent domain, was executing a condemnation action for private, not public, use. *Id.* at 110-11. In *Casino Redevelopment*, how the condemned property would be developed was left to the discretion of a private entrepreneur and was outside the control of the public body endowed with condemning authority. *Id.* at 109. Here, the City is utilizing the Iowa Urban Renewal Statute to affect the revitalization of a blighted area.

A more appropriate line of authority begins with *Joslin Manuf. Co. v. City of Providence*, 262 U.S. 668 (1923), wherein the United States Supreme Court examined a municipality's right to execute legislative pronouncements. In *Joslin*, the Court was faced with a similar situation in which the plaintiff sought to enjoin the defendant city, which was acting pursuant to authority derived from a state statute, from taking possession of, or interfering with, its property. *Id.* at 669. The Court stated:

> [T]he validity of the act is challenged as denying due process of law, on the ground that the question of the necessity for taking the property has not been determined by the Legislature itself, but is relegated to the city to decide ex parte, without appeal or opportunity for hearing and decision by an impartial tribunal. That the necessity and expediency of taking property for public use is a legislative and not a judicial question is not open to discussion. Neither is it any longer open to question in this court that the Legislature may confer upon a

municipality the authority to determine such necessity for itself.

> The question is purely political, *does not require a hearing*, and is not the subject of judicial inquiry. The Legislature here, while investing the city with the authority to determine it, in each instance, has carefully circumscribed the power by limiting its exercise within a definitely restricted area. The city may take less than this area, but cannot take more.

Id. at 678 (emphasis added) (citations omitted)[2]. Similarly, the Iowa Legislature

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[2] In *Bi-Metallic Investment Co. v. State Board of Equalization*, 239 U.S. 441 (1915), the Court considered whether a property owner could contest the increase in valuation of all taxable property in a given area. Justice Holmes, writing for the Court, stated:

> The Constitution does not require all public acts to be done in town meeting or an assembly of the whole. General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule.

Id. at 445.

In *Rogin v. Bansalem Township*, 616 F.2d 680, 693-94 (3rd Cir. 1980), the Third Circuit examined a residential zoning change imposed by the defendant city's board of supervisors. The change affected the property interest of a condominium developer who had already begun developing the land it owned. The Third Circuit stated:

> To provide every person affected by legislation the various rights encompassed by procedural due process including hearings, opportunity for confrontation and response, clear standards, an impartial arbiter, and possibly judicial review would be inconsistent with the structure of our system of government. The act of legislating necessarily entails political trading, compromise, and ad hoc decisionmaking which, in the aggregate, produce policies that at least approximate a fair and equitable distribution of social resources and

has imposed substantive and procedural restrictions on what a municipality can and cannot do. For instance, the statute requires municipalities to: adopt a resolution of necessity for an urban renewal plan, Iowa Code § 403.4; adopt an urban renewal plan taking into consideration the plan of municipality as a whole, Iowa Code § 403.5(1); comply with the exercise of the power of eminent domain as provided for in

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> obligations.
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> Absent an indication that this process inherently treats a particular class of persons inequitably, it is unnecessary for the courts to intervene because the relatively large number of persons affected works to ensure that the legislature will not act unreasonably toward the populace. In short, the general theory of republican government is not due process through individual hearings and the application of standards of behavior, but through elective representation, partisan politics, and the ultimate sovereignty of the people to vote out of office those legislators who are unfaithful to the public will. Inasmuch as the Supervisors, in passing the zoning amendments, were acting in a legislative capacity, [plaintiff] has no procedural due process claim against their actions.

Id. at 693-94 (footnotes omitted). The court concluded:

> [T]he Supreme Court affords state and local governments broad latitude in enacting and implementing legislation affecting the use of land. Implicit in this deference is the recognition that land use regulation generally affects a broad spectrum of persons and social interests, and that local political bodies are better able than federal courts to assess the benefits and burdens of such legislation. Thus, absent defects in the process of enacting the legislation, or manifest irrationality in the results flowing from that process, courts will uphold state and local land use regulations against challenges based on federal constitutional grounds.

Id. at 698.

Iowa Code Chapter 6B, Iowa Code § 403.7.

Following *Joslin* and relying upon the principle set forth in it, the *North Laramie v. Hoffman*, 268 U.S. 276, 284-85 (1925) Court came to a similar conclusion. In *North Laramie*, the defendant board of county commissioners proposed to establish a road across the plaintiff's land, and in compliance with the state statute, published notice in a local newspaper of its proposed action. *Id.* at 277. The plaintiff claimed the defendant board denied the plaintiff due process of law and executed a taking of property without due process in contravention of the Fourteenth Amendment of the Constitution. *Id.* at 278. Specifically, the plaintiff claimed the defendant, acting pursuant to a state statute, denied him an opportunity to be heard. *Id.* The Court described the public use and notice implications when the government takes such action:

> The taking of property provided for by the statute is a taking of land under the direction of public officers. . . . [T]he necessity and expediency of the taking of property for public use 'are legislative questions, no matter who may be charged with their decision, and a hearing thereon is not essential to due process in the sense of the Fourteenth Amendment.'

Id. at 284 (quoting *Joslin Co. v. Providence*, 262 U.S. at 678). The *North Laramie* Court also stated:

> [I]t has been uniformly held that statutes providing for . . . condemnation of land may adopt a procedure, summary in character, and that notice of such proceedings may be indirect, provided only that the period of notice of the initiation of proceedings and the method of giving it are

> reasonably adapted to the nature of the proceedings and their subject matter and afford to the property owner reasonable opportunity at some stage of the proceedings to protect his property from an arbitrary or unjust appropriation.

Id. at 283. Notice by publication of the urban renewal plan and the creation of the urban renewal district was "reasonably adapted to the nature of the proceedings," and in this court's view, adequately protects plaintiff's interest.

In *Rex Realty Co. v. City of Cedar Rapids*, C99-103-MJM, a previous decision of this court involving similar due process and condemnation concerns, at issue was whether the plaintiff had a constitutionally protected right to pre-detrimental notice and hearing with regard to the right to be free from a governmental taking for other than a public purpose. This court concluded that "the clear weight of legal authority suggests a state is under no constitutional obligation to provide a pre-deprivation hearing to challenge the legality of a condemnation." *Id.* (citations omitted).

The principal tenets of these decisions guide the court in its conclusion today. Crompton is not entitled to actual notice, beyond what the statute requires, of the City's urban renewal plan and creation of the Ice Harbor Urban Renewal District. Crompton's characterization of the urban renewal plan and declaration of the District as the statutory predicate to the condemnation of Crompton's property by the City does not remove the court's analysis from the established line of eminent-domain

case law. In the end, the Iowa Urban Renewal statute requires municipalities to adhere to the power of eminent domain in the manner provided for in Iowa Code Chapter 6B. Again, as in *Rex Realty*, this court reiterates the reasoning of the *Muscarello v. Village of Hampshire*, 644 F. Supp. 1016, 1019 (N.D. Ill. 1986) court and holds that Crompton's "procedural due-process analysis, valid as it might be in its proper sphere, is simply inapplicable to eminent-domain cases." The notice provision of the Iowa Urban Renewal Statute requiring publication of the urban renewal plan in a newspaper of general circulation in the municipality's area of operation is a reasonable means to put parties on notice of a prospective affect on a property interest from an urban renewal plan.

Accepting the facts as alleged in the complaint, and granting all reasonable inferences to Crompton, the court is convinced there is no set of facts that plaintiff can put forth that would entitle it to relief. The City's urban renewal plan and subsequent creation of the Ice Harbor Urban Renewal District does not work a taking without notice upon Crompton's property interest in contravention of the Federal Constitution, nor does it contradict the case authority interpreting and applying the City's power of eminent domain. As such, Crompton is not entitled to notice beyond what the statute requires of the declaration of the Ice Harbor Urban Renewal District. It is clear the statute is constitutionally sufficient and the City's compliance with the

statute accords with the principles supporting the exercise of eminent domain powers. Accordingly, the City's motion to dismiss count 6 of Crompton's second amended complaint is granted.

ORDER

For the reasons mentioned herein, the Defendant's motion to dismiss is GRANTED.

Done and so ordered this ____ day of December, 2001.

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Michael J. Melloy,
United States District Judge for the
Northern District of Iowa